Abdul Hai bin Haji Masud Ahmad v Kwang Yuet Song

COURT OF APPEAL (KUALA LUMPUR) — CIVIL APPEAL NO P-04-9-95
NH CHAN, ABU MANSOR AND ABDUL MALEK JJCA
2 MAY 1996

Landlord and Tenant *— Controlled premises — Termination of contractual tenancy — Lease for fixed term of 10 years — Registered pursuant to s 221 of National Land Code 1965 — Landlord sought to evict tenant after expiry of lease — Whether tenant protected as controlled tenant — Whether landlord must comply with s 16 of Control of Rent Act 1966 — Control of Rent Act 1966 s 16 — National Land Code 1965 s 221*

Landlord and Tenant *— Controlled premises — Premium — Lease for fixed term of 10 years — Tenant paid money as consideration for tenancy 'for a long period' — Whether tenancy void in breach of s 10(1) of Control of Rent Act 1966 — Control of Rent Act 1966 s 10(1)*

Equity *— Estoppel — Tenancy — Controlled premises — Tenant granted lease of 10 years by landlord — Whether tenant obliged to give up vacant possession of premises when tenancy expired — Whether tenant estopped by contract from claiming that term granted to him was longer than term stipulated in agreement*

The respondent was the registered owner of a building in Bukit Mertajam ('the premises') which was subject to the provisions of the Control of Rent Act 1966 ('the Act'). On or about 1 November 1969, the respondent leased the premises to the appellant. Pursuant to a written agreement, it was stated that the lease was for a fixed term of 10 years. Meanwhile, the appellant had also paid the respondent a sum of RM10,000 as 'consideration of giving the [appellant] the tenancy for a long period', and the lease was registered pursuant to s 221 of the National Land Code 1965. At the end of the 10-year period, the respondent sought to evict the appellant. In the High Court, the appellant alleged that the respondent had no right to do so on the grounds, inter alia, that: (i) the tenancy was void and unenforceable as the payment of premium of RM10,000 by the appellant to the respondent as a consideration for the respondent leasing the premises was in breach of s 10(1) of the Act; (ii) as a controlled tenant protected under the Act, the appellant could not be evicted unless one of the grounds in s 16 of the Act was complied with; (iii) the respondent would first need to give the appellant a one-year notice before she could exercise her right to evict the appellant under s 16 of the Act. The judge, however, found that the RM10,000 was not a deposit, but a consideration for the respondent agreeing to bind herself to a fixed term tenancy of 10 years at a constant rental which was registered against her title. The judge went on to hold that the appellant as a contractual tenant, was obliged to give up vacant possession of the premises when the tenancy expired, and that he was estopped by contract from claiming that the term granted to him was longer than the actual term that he had agreed to. The appellant appealed.

Held, dismissing the appeal:

(1) The trial judge found that the tenancy was only for 10 years and he duly gave his reasons before arriving at that finding. It was trite law that he was entitled to make such finding after seeing and hearing the witnesses, and this court could not lightly disagree with it. Thus, the appellant had no tenancy to be protected at the time of the order of possession, and the appellant's appeal was therefore rejected on this ground (see p 594H–I).

(2) There was merit in the counsel for the respondent's argument that the respondent was not relying on s 16 of the Act in order to evict the appellant, the reason being that the tenancy was for a definite period of 10 years, and it had come to an end. The statutory protection of s 16 of the Act could only have been relied upon by the appellant if there was a tenancy and in this case, the respondent had made no promise for renewal, and had in fact, consistently refused to accept rent when the appellant tried to pay (see p 595A–B).

[Bahasa Malaysia summary:

Penentang merupakan pemunya berdaftar sebuah bangunan di Bukit Mertajam ('premis tersebut') yang tertakluk di bawah peruntukan Akta Kawalan Sewa 1966 ('Akta tersebut'). Pada atau kira-kira pada 1 November 1969, penentang telah memajak premis tersebut kepada perayu. Mengikut suatu perjanjian bertulis, adalah dinyatakan bahawa pajakan itu adalah untuk tempoh yang tetap selama 10 tahun. Sementara itu, perayu juga telah membayar kepada penentang sejumlah RM10,000 sebagai 'balasan terhadap pemberian penyewaan kepada [perayu] untuk jangkamasa yang panjang', dan pajakan itu telah didaftarkan mengikut s 221 Kanun Tanah Negara 1965. Pada hujung jangkamasa 10 tahun itu, penentang cuba mengusir perayu. Dalam Mahkamah Tinggi, perayu mendakwa bahawa penentang tidak ada hak untuk berbuat demikian, atas alasan-alasan, antara lain, bahawa: (i) penyewaan itu adalah batal dan tidak boleh dikuatkuasakan kerana bayaran premium sebanyak RM10,000 daripada perayu kepada penentang sebagai balasan kepada penentang menyewakan premis tersebut adalah melanggar s 10(1) Akta tersebut; (ii) sebagai penyewa terkawal yang dilindungi di bawah Akta tersebut, perayu tidak boleh diusir melainkan jika satu daripada alasan-alasan di dalam s 16 Akta tersebut dipenuhi; (iii) penentang perlu terlebih dahulu memberi satu tahun notis kepada perayu sebelum penentang boleh melaksanakan haknya untuk mengusir perayu di bawah s 16 Akta tersebut. Walau bagaimanapun, hakim mendapati bahawa amaun sebanyak RM10,000 itu bukan merupakan deposit, tetapi suatu balasan kepada penentang yang bersetuju supaya diikat dengan penyewaan jangkamasa tetap selama 10 tahun untuk bayaran sewa yang tetap, yang telah didaftarkan terhadap hakmiliknya. Beliau seterusnya memutuskan bahawa perayu sebagai penyewa kontraktual,

adalah bertanggungjawab untuk menyerahkan milikan kosong premis tersebut apabila penyewaan itu tamat tempohnya, dan bahawa perayu adalah diestop oleh kontrak daripada mendakwa bahawa jangkamasa yang diberikan kepadanya adalah lebih lama daripada jangkamasa sebenar yang telah dipersetujuinya. Perayu membuat rayuan.

Diputuskan, menolak rayuan itu:

(1) Hakim perbicaraan mendapati bahawa penyewaan itu hanyalah untuk 10 tahun sahaja dan beliau telah memberikan alasan-alasan seperti yang sepatutnya sebelum tiba kepada pendapat itu. Adalah merupakan undang-undang mantap bahawa beliau berhak untuk memberikan pendapat itu setelah melihat dan mendengar saksi-saksi, dan mahkamah ini tidak boleh tidak bersetuju dengan pendapat itu secara melulu. Oleh itu, perayu tersebut tidak mempunyai penyewaan untuk dilindungi pada masa perintah milikan, dan rayuan perayu adalah dengan itu ditolak atas alasan ini (lihat ms 594H–I).

(2) Terdapat merit di dalam hujah peguam kepada penentang bahawa penentang tidak bergantung kepada s 16 Akta tersebut untuk mengusir perayu, atas sebab bahawa penyewaan itu adalah untuk jangkamasa tetap selama 10 tahun, dan tempoh itu telah tamat. Perlindungan statutori s 16 Akta tersebut hanya boleh digunakan oleh perayu jika terdapat penyewaan dan di dalam kes ini, penentang tidak membuat perjanjian untuk pembaharuan, dan malahan telah dengan konsisten menolak untuk menerima bayaran sewa apabila perayu cuba untuk membayar (lihat ms 595A–B).]

[*Editorial Note*: The appellant has appealed to the Federal Court vide Civil Appeal No P–04–9–95.]

Notes

For cases on controlled premises, see 9 *Mallal's Digest* (4th Ed, 1995 Reissue) paras 30–779.

Case referred to

Wong Miew Choong v Loh Fatt [1961] 27 MLJ 219

Legislations referred to

Control of Rent Act 1966 ss 10(1), 16(a), (e)
National Land Code 1965 s 221

Appeal from: Civil Suit No 420 of 1979 (High Court, Pulau Pinang)

RJ Manecksha (*Sharma* with him) (*Ong & Manecksha*) for the appellant.
Petra Oon (*Lim Lim & Oon*) for the respondent.

Cur Adv Vult

Abu Mansor JCA: The appellant/plaintiff appealed against the decision of the Penang High Court Judge, Vincent Ng J given on the 3 October 1994 wherein he dismissed the appellant's claim for possession. After hearing arguments, we upheld the learned judge's decision and dismissed their appeal on the 12 December 1995. The appellant now appeals against that said dismissal.

The undisputed facts of this case are as follows:

(1) The respondent is the registered owner of Lot 815, Mukim 10, Seberang Perai Tengah, Penang, upon which stands premises No 14, Straight Street, Bukit Mertajam;

(2) The said premises are subject to the provisions of the Control of Rent Act 1966 (hereinafter 'the Act');

(3) The appellant was in occupation of the premises and was let into possession on or about 1 November 1969, under a lease registered pursuant to s 221 of the National Land Code 1965, as the tenancy was for more than three years;

(4) At the time the lease was entered into, the appellant paid the respondent RM10,000 as 'consideration of giving the plaintiff ('appellant') the tenancy for a long period'.

Mr RJ Manecksha, counsel for the appellant, in his first ground of appeal, contended that the learned trial judge erred in failing to take into account the fact that the payment of premium of RM10,000 by the appellant to the respondent, as a consideration for the respondent leasing the premises, was in breach of s 10(1) of the Act rendering the tenancy void and unenforceable, giving the appellant all security of tenure without limitation of the length of the tenancy.

Mr Manecksha further submitted that it was convenient for him to take ground 2 and ground 3 together. In ground 2 of the petition of appeal, he contended that:

> (2) The learned judge further erred in arriving at his finding that a contractual tenant who is no longer such after the contractual tenancy is obliged to give up vacant possession of premises when in fact the position is that upon the expiry or determination of the contractual tenancy, the tenant is protected by virtue of the provisions of the Control of Rent Act 1966, and cannot be evicted unless one of the grounds in s 16 of the Act is complied with.

Then in ground 3 he contended as follows:

> (3) The learned judge was wrong in holding that the appellant 'is clearly estopped by contract from claiming that the term granted to him is longer than the actual term that he had agreed to' as the doctrine of estoppel cannot be invoked by the parties to defeat the provisions of the Control of Rent Act 1966, if it is established that the tenant is entitled to protection.

The crux of appellant's counsel's submission was that since the appellant was a tenant holding under a controlled tenancy, possession could only be

given to the landlord respondent in the several cases enumerated in the circumstances given in s 16(a)–(e) of the Act. Equally important was that before the landlord could exercise his right to evict a controlled tenant under the said s 16 of the Act, he would need to give the appellant one year's notice and he alleged this was not done. He therefore submitted that the learned judge erred in giving possession when the respondent had not fulfilled the requirement of or prerequisite of s 16 of the Act. The learned counsel cited the case of *Wong Miew Choong v Loh Fatt* [1961] 27 MLJ 219 at p 220, where Ong J (as he then was) held:

> The contract in force, therefore, at all material times as between the appellant and his sub-tenant was one which brings the case well within the four corners of paragraph (j).
>
> It is wrong to say, where merely a remedy is withheld, that no cause of action, as such, exists, and that no cause of action arises until a landlord can establish a case under any of the paragraphs (a)–(j). The correct statement of the law, in my opinion, is that, notwithstanding that he may bring an action for possession after proper termination of a tenancy, the Ordinance merely says that even so 'no order or judgment for recovery of possession shall be made or given' except in the special circumstances set out.
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> The Control of Rent Ordinance therefore merely operates as a fetter on the exercise of the common law rights of a landlord. Such being the case, any statutory invasion of or interference with private rights ought to be strictly construed.

Counsel for the respondent, Miss Oon, in reply, however, contended that the learned judge had made a correct finding of fact where he held at p 44 and p 45 of the record of appeal:

> In the event, on the evidence I had before me and on the balance of probabilities I find that neither on 6 August 1969 nor at any time thereafter did the defendant make any oral promise to grant the plaintiff any term of lease that was in excess of the terms stated in the written agreement and P4.
>
> I further find that the RM10,000 paid by the plaintiff to the defendant, was paid, not as a deposit but as a consideration for the defendant agreeing to bind herself to a fixed term tenancy of 10 years, at a constant rental which was registered against her title. This must have been so, because the plaintiff himself had testified that 'I did not want her to let it out to others ... I needed it badly.' At any rate, this question of whether RM10,000 paid to the defendant was a refundable deposit or a consideration, was a non-issue as the plaintiff in his pleadings did not claim the refund of same.

We upheld the submission of counsel for the respondent that the learned trial judge had made a correct finding. He found that tenancy was only for 10 years and he duly gave his reasons before arriving at that finding. It is trite law that he is entitled to make such finding after seeing and hearing the witnesses and we find that we could not lightly disagree with it. We therefore reject the appellant's appeal on this ground, and held that at the time of the order of possession the tenant had no tenancy to be protected.

A We also found merit in the counsel for the respondent's argument that the respondent was not relying on s 16 of the Act in order to evict the appellant, the reason being that the tenancy was for a definite period of 10 years and it had come to an end. The statutory protection of s 16 of the Act could only have been relied upon by the appellant if there was a tenancy and in this case, as already found by the learned trial judge, the B respondent had made no promise for renewal and had in fact, as found by him, consistently refused to accept rent when the appellant tried to pay.

We agree fully with the finding of the learned judge, as stated in his grounds of judgment, that the appellant's claim be rejected. There was no case of the learned judge below decontrolling the tenancy. This being our C finding, we therefore dismissed the appeal with costs, the deposit to account of taxed costs.

Order accordingly.

D Reported by Isabel Liong

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